Supreme Court, U.S.
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No. 99-1856

IN THE

# Supreme Court of the United States

MIAMI-DADE COUNTY, through its Manager and Board of County Commissioners,

*Petitioner,*

*v.*

AGRIPOST, INC., and AGRI-DADE, LTD.,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

## BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Should this Court review the question of whether the Rooker-Feldman doctrine bars a Federal action for an uncompensated taking when an Eleventh Circuit panel unanimously found (a) that the takings claim had not been adjudicated and could not have been adjudicated in a prior State court action, (b) that Rooker-Feldman was therefore not triggered, and (c) that the Federal takings claim was properly dismissed without prejudice as unripe?

2. Should this Court review Florida law questions of claim preclusion and issue preclusion which were decided unanimously against petitioner by the Eleventh Circuit and the District Court?

3. Should this Court grant certiorari to review petitioner's claim and issue preclusion and Rooker-Feldman claims when no judge of the Eleventh Circuit either accepted them or considered them sufficiently meritorious to justify polling when petitioner sought rehearing en banc?

## STATEMENTS PURSUANT TO RULE 29.6

Respondent, Agri-Dade, Ltd., is a Florida limited partnership.

Respondent, Agripost Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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## STATEMENT OF THE CASE

The arguments urged on this Court by the petition for certiorari are the same as those urged below. They have been rejected by every judge who has considered them: Chief Judge Davis of the Southern District of Florida, a unanimous panel of the Eleventh Circuit on the appeal, the same unanimous panel of the Eleventh Circuit on petition for rehearing, and every judge of the Eleventh Circuit on petition for rehearing en banc. Indeed, no judge of the Eleventh Circuit deemed the issues worthy of polling to decide whether to rehear them en banc. App. 37.[1] There is no important issue in this case that merits certiorari review by this Court.

### A. Factual Background

The action below arose on a motion to dismiss by petitioner-defendant Miami-Dade County ("Dade"), so that the allegations of the complaint must be taken to be true. The complaint alleged that in 1986 Dade sought out a company to build a waste disposal plant and chose respondent-plaintiff Agripost, Inc. ("Agripost") to construct one based on an innovative process. The risk of odors was foreseen: a contract between Dade and Agripost provided that if Dade's Department of Environmental Resources Management ("DERM") determined that odors were coming from Agripost's plant, DERM was required to give Agripost written notice and a reasonable opportunity to cure, and Agripost then had to cure them. Dade's petition for certiorari (the "petition") omitted reference to this contract provision, an omission we point out pursuant to our duty under Supreme Court Rule 15.2.

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1. References to the petition will be designated by the prefix "Pet." and to the appendix of the petition by the prefix "App."

Dade's petition further omits to disclose that DERM gave notice of the odors, that Agripost developed a plan to cure, involving the retrofitting of equipment, and that DERM approved the plan to cure and a timetable for action. Political pressure grew because of the odors, and Dade officials jettisoned Agripost's contract right to have a reasonable opportunity to cure before Agripost could implement the cure in accordance with the plan and timetable approved by DERM. Dade moved administratively to close the plant down and did so without paying compensation. The complaint in the case below alleged breach of contract as well as uncompensated takings claims under Federal and Florida law.

## B. The Florida State Court Proceeding To Review Dade's Administrative Closing

The administrative proceeding and its judicial review by a Florida three-judge court are described in the Eleventh Circuit's opinion, printed in the Appendix of the petition at App. 1-18. The three-judge Florida court, whose opinion is at App. 57-59, upheld the County's exercise of its police power under the applicable Florida standard for judicial review of administrative decisions, substantial competent evidence, and the plant was closed. App. 4-5.

The Eleventh Circuit found, on review of the record for that three-judge State court proceeding, that no claim for an uncompensated taking had been raised before the three-judge court and, as a matter of Florida law, none could have been raised. (App. 13-15). To quote the Eleventh Circuit panel:

> We conclude that *the [Florida] Circuit Court did not acknowledge, and therefore did not litigate, Agripost's takings claim for two reasons*. First,

> *the record is devoid of any indication that Agripost presented such a claim to the Circuit Court* after the court affirmed the Board's revocation of Agripost's permit. Specifically, *we find no allegation by Agripost to the effect that its property had been rendered worthless and that Florida provided no adequate process for obtaining just compensation. Nor is there any indication that the Circuit Court noticed a takings claim on its own initiative* and, having done so, rejected it as legally insufficient.
>
> Second, *the Circuit Court lacked the authority to determine the takings issue.* The Circuit Court's task was limited to one question: whether the Board's revocation of Agripost's permit was justified. *The court was not called upon to determine whether there had been a Fifth Amendment taking. A Fifth Amendment takings claim could not have materialized until the [Florida] Circuit Court passed on the propriety of the Board's revocation of Agripost's permit. See Lake Lucerne Civic Ass'n Inc., v. Dolphin Stadium Corp.*, 878 F.2d 1360, 1370 (11th Cir. 1989) *("The point is that the propriety of the agency action must be finally determined before a claim for inverse condemnation exists") (quoting Albrecht v. State, 444 So.2d 8, 12 (Fla. 1984)).*

App. 13-14 (emphasis added).

In the cases cited, *Lake Lucerne* held, following the Florida Supreme Court in *Albrecht v. State*, that the takings

claim may only be brought *after* the conclusion of the administrative proceeding and its judicial review. The Florida Supreme Court said in *Albrecht*:

> "the petitioners' claim of uncompensated taking constitutes a separate and distinct cause of action from that litigated previously. In the first action the petitioners were challenging the propriety of the agency's actions. The determination, judicially or otherwise, that the action was proper under the applicable statute does not necessarily also determine that there is no taking, nor does it necessarily bar the valid exercise of police power. . . . In addition, the facts necessary to maintain the taking action are different. There must be a diminution in value of the property as well as a lack of alternative uses. Under a constitutionally valid statute providing for protection of the public welfare, those facts are irrelevant to the determination of propriety of the agency action."

444 So.2d at 12 (citation omitted).

The three-judge Florida court was also not a trial court and thus not an appropriate forum for a trial of either the takings claim or the breach of contract claim.

Dade flatly misstates both the Eleventh Circuit holding and the record of the State court proceeding when, at Pet. 4, it says that "the Florida court . . . reject[ed] Agripost's taking claims. . . ." Dade repeats this misstatement of the record in Argument heading I B, Pet. 10, saying that "the State court had held that no taking occurred." The petition thus relies heavily on a misstatement of the record below. Indeed, without this misstatement of the record Dade has no Rooker-Feldman point to urge on this Court.

Dade, furthermore, does not address either of the cases cited by the Eleventh Circuit to show that the takings claim could not have been raised before the three-judge court reviewing Dade's administrative decision. Dade does not even cite these cases in its petition for certiorari. Nor does it challenge the Eleventh Circuit's opinion on the point. What Dade does is simply to ignore what the Eleventh Circuit held and, we regret to say, to misrepresent the record.

### C. Consequences of the Plant Closing

When the plant was closed, Agripost lost its entire investment, some $30 million. The banks which had loaned it money to build the plant saw their loans turn uncollectible. In addition, Agripost was a public company, with 20 million shares outstanding; based on stock prices its equity was worth as much as $100 million. Loss of the plant forced Agripost into bankruptcy; there were no funds to pay creditors, and the stockholders' entire equity was wiped out. A plan of reorganization under Chapter 11 preserved the right of the company to bring this action for the benefit of creditors and stockholders.

### D. Federal Proceedings Below

Agripost sued Dade in the Federal District Court for the Southern District of Florida, asserting, *inter alia*, Federal and State inverse condemnation claims and breach of contract. The State claims were brought under 28 U.S.C. § 1367 (supplemental jurisdiction) and 28 U.S.C. § 1334(b), under the Court's "related-to" jurisdiction over the case because of the Chapter 11 reorganization plan.

Dade moved to dismiss with prejudice and for summary judgment with prejudice on preclusion grounds: claim preclusion (res judicata), issue preclusion (collateral estoppel), and the Rooker-Feldman doctrine.

Chief Judge Edward Davis, finding no merit to any of Dade's preclusion motions, denied all of them, including the Rooker-Feldman point, and denied Dade's application for dismissal with prejudice. He ruled *sua sponte*, however, that the Federal takings claim could not be pursued in Federal court until the State takings claim had been adjudicated in Florida State court, following *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) and a similar Eleventh Circuit case. He then exercised his discretion not to accept supplemental or related-to jurisdiction and dismissed the entire proceeding without prejudice to renewal in the State court.

Agripost immediately refiled the case in Florida State court. Since the plant had been closed in 1991, by that time over six years had elapsed since the events complained of. Dade appealed Judge Davis's decision to the Eleventh Circuit, though technically it had been the prevailing party, and Dade then relied on its appeal to have the Florida court stay further litigation on the merits until all Federal litigation had ended. As a result, even though Dade thereafter lost its appeal and two petitions for rehearing, it managed to prevent plaintiff from litigating on the merits for another two and a half years. In April of 2000, Dade further managed to have the Florida stay continued pending this petition for certiorari, so that the events of the case will be over nine years old before discovery and litigation on the merits can begin.

A panel of the Eleventh Circuit unanimously denied Dade's appeal, holding that because the Florida three-judge Court did not have Agripost's takings claim before it, neither the Rooker-Feldman doctrine applied nor was there claim preclusion. (App. 14-16). As to issue preclusion, or collateral estoppel, the Eleventh Circuit held, also on Florida law grounds, that the issue Dade sought to preclude had not been litigated or decided in the prior State court proceeding and that there was thus no issue preclusion.

Dade petitioned for rehearing, which was unanimously denied. It petitioned for rehearing en banc. The Eleventh Circuit held:

> The Petition(s) for Rehearing are DENIED *and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled* on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

App. 37-38 (emphasis added).

Dade nevertheless brought this petition for certiorari, on the basis of which it has persuaded the Florida court to maintain its stay of litigation on the merits.

## REASONS FOR DENYING THE WRIT

### I. THERE IS NOTHING IN THIS CASE TO MERIT SUPREME COURT REVIEW

First, Dade's petition sets forth no issue that would justify Supreme Court review. Preclusion issues arising from a Florida State court proceeding are governed by the law of the rendering court, i.e., by Florida law. See App. 9, n.11. Florida law issues are not of national significance and do not justify Supreme Court review.

Second, Dade's Rooker-Feldman claim is based on a misrepresentation of the record in the prior proceeding. The Eleventh Circuit expressly held that no Florida court had ever adjudicated Agripost's takings claim or could have. Dade sets forth no reason to show that holding was wrong but ignores it, and writes as if the Florida state court had adjudicated the takings claim. Pet. 4. Absent a prior State court adjudication of an issue in the Federal case, Rooker-Feldman does not apply.

The Federal case, moreover, has been dismissed without prejudice, the Federal takings claim having been found unripe, and the breach of contract claim dismissed in the exercise of the District Court's supplemental jurisdiction discretion. Accordingly it would be improvident for this Court to devote its scarce time to resolving an alleged Rooker-Feldman issue when the case is in this posture.

## II. DADE'S EFFORT TO CREATE ILLUSORY CONFLICTS

At pp. 6-7 of the petition, Dade asserts that the Eleventh Circuit decision below has created conflicts with four Supreme Court decisions. If this were true, it would be hard to imagine a reason why no judge of the Eleventh Circuit deemed the case worthy of even a vote on whether to undergo further review. The answer is obvious: there are no such conflicts.

The first case alleged to conflict, *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), held that State courts have the power to strike down zoning actions that are confiscatory. Dade invokes it at Pet. 6 and in point 1A, at 7-9, to try to make out a claim that pursuant to *First English* the Florida Court had adjudicated a takings issue that thereafter was binding by virtue of collateral estoppel, or issue preclusion.

The Eleventh Circuit mentioned *First English* at App. 16-17, but in doing so held that, while certain zoning actions are invalid under Florida law if they are confiscatory, the rule applies only to zoning ordinances, and not to permit denials and revocations constituting a proper exercise of police power. As the Eleventh Circuit pointed out, the Florida State court did not litigate the questions of whether Dade's administrative actions had rendered Agripost's property worthless or had effectively confiscated it. App. 17. Thus there was no collateral estoppel, or issue preclusion.

This is a question of Florida law, not worthy of Supreme Court review. For the reasons set forth in the Eleventh Circuit opinion, App. 16-17, it is also a correct interpretation.

The three-judge Florida court was conducting a review of an administrative decision under a substantial competent evidence test, not litigating or adjudicating any issue of fact under a preponderance of the evidence test. It was not a trial court. *First English* is a red herring in this context; the question for issue preclusion, or collateral estoppel, is what issues were actually litigated and necessarily determined. Restatement (2d) of Judgments, § 27 (1982). Dade's public policy issues argued at Pet. 7-9 are irrelevant. At best, they should be addressed to the Florida legislature and not to this Court.

The second doctrine that Dade claims to conflict is *Rooker-Feldman*, which we discuss in point III below. As previously noted, Dade has no genuine Rooker-Feldman claim.

The third Supreme Court case invoked by petitioner is *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Eleventh Circuit, however, cited *Lucas* only to set forth the elements of a takings claim, and did not otherwise construe or attempt to apply that case. Dade's attempt to contend that the Florida three-judge administrative review court applied *Lucas* is also unfounded. There is no mention of *Lucas* in the three-judge court's decision. Nor could there have been. *Lucas* was decided on June 29, 1992, over three weeks after the three-judge court decision, which was on June 5, 1992. App. 57.

The fourth Supreme Court case that Dade invokes is *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). *Williamson* provided the legal basis on which this case was dismissed without prejudice as unripe, but that issue was not before the Eleventh Circuit and is not relevant here.

In sum, petitioner listed Supreme Court cases referred to in the Eleventh Circuit decision but has failed to show that the Eleventh Circuit decision conflicted with any of them.

## III. PETITIONER'S DISCUSSION OF THE ROOKER-FELDMAN DOCTRINE IS IRRELEVANT

The petition's lengthy discussion of the Rooker-Feldman doctrine, Pet. I B, 10-21, is premised on the incorrect assumption that the Federal court below was asked to review and reverse a State court adjudication of the takings claim. *See, e.g.*, argument heading for IB at Pet. 10. Since the Eleventh Circuit held that there never was a State court adjudication of the takings claim, nor could there have been, App., 13-15, a holding unchallenged by petitioner Dade but misrepresented, petitioner's premise is false and its discussion of Rooker-Feldman irrelevant.

Thus the "inextricably intertwined" doctrine of *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) does not apply because there was no State court adjudication with which the later Federal case could have been intertwined. The question of whether the Eleventh Circuit improperly relied on *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983) is irrelevant, since *Wood* was not mentioned in its decision. Nor was a peculiar Eleventh Circuit "exception" to Rooker-Feldman involved, as petitioner claims at Pet. 12. Rooker-Feldman does not apply in any case unless there has been a prior State court adjudication.

Similarly, the footnote at page 13 of the petition is irrelevant. Whatever differences there may be between the Eleventh and other Circuits as to the application of Rooker-

Feldman, no case holds that the doctrine applies to bar a subsequent Federal action on a cause of action not previously adjudicated by a State court.[2]

Finally, at Pet. 16-19, petitioner engages in a discussion of why the Florida State court "had rejected Agripost's taking claims," Pet. 16, in the teeth of the Eleventh Circuit's express holding that the Florida State court had no such takings claim before it, could not have had such a claim before it, and had made no such adjudication. The Florida cases cited by the three-judge Florida opinion went to the question of whether Dade's administrative agencies had substantial competent evidence before them to support administrative revocation of Agripost's permit, not to any takings claim, as the Eleventh Circuit expressly found.

## IV. BOTH THE ELEVENTH CIRCUIT AND THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION FOR THE RULINGS AT ISSUE HERE

In Point II of the petition, Dade claims that the District Court lacked subject matter jurisdiction to decide against it the preclusion motions Dade itself had brought. Dade also complains at Pet. 22 about the Eleventh Circuit's jurisdiction to rule that its preclusion rulings were binding for future litigation because the Eleventh Circuit was the rendering jurisdiction. App. 9, n.11. Both arguments are frivolous.

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2. Petitioner's quote from *Treister v. City of Miami*, 893 F. Supp. 1057, 1067 (S.D. Fla. 1992), *aff'd*, Case No. 95-5173 (May 15, 1995) (unpublished), Pet. 15, n.10, is also irrelevant. While a Federal takings claim and a State takings claim may be identical for res judicata purposes, Rooker-Feldman does not apply when neither claim has been adjudicated in a prior State court proceeding.

The Eleventh Circuit's statement of which law governs preclusion issues is hornbook law. *See* Restatement (2d) Judgments, § 87 (1982). The Eleventh Circuit was considering the future effect of the District Court's preclusion rulings in order to decide whether Dade, the technically prevailing party below, could show it was aggrieved by the judgment and had standing to appeal, under authorities cited by the Eleventh Circuit at App. 8-10. In App. 9-10, n.11, the Eleventh Circuit concluded that Dade would be bound by the rendering District Court's judgment, therefore was aggrieved, and had standing to appeal. The issue had to be decided before the appeal could be considered on the merits and was therefore well within the Eleventh Circuit's jurisdiction.

The District Court also unquestionably had subject matter jurisdiction to decide the preclusion motions that Dade presented to it. This case was unlike *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), where this Court was dealing with a total absence of Article III jurisdiction. Here the District Court had before it a complaint based on Federal question jurisdiction, supplemental jurisdiction and related-to bankruptcy jurisdiction. It had power to reject Dade's preclusion motions on the merits. Had it ruled for Dade, its dismissal of the takings claim would not have been without prejudice as unripe, but with prejudice as to precluded claims and issues. Neither the decision that the Federal claim was unripe nor the ultimate decision not to exercise discretionary supplemental jurisdiction as to State law claims served to oust the District Court retroactively of all Article III subject matter jurisdiction. *Cf. Disher v. Information Resources, Inc.*, 873 F.2d 136 (7th Cir. 1989). The Circuit Court then had the right to affirm or reverse Judge Davis's preclusion determination on the merits. *Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1095, 10 (11th Cir. 1996). Neither Court lacked subject matter jurisdiction.

## CONCLUSION

The writ should not be granted.

Dated: June 16, 2000

Respectfully submitted,

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